

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

GLORIA E. MCCALED,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 18-CV-1390-SMY-DGW
)	
MASSAC COUNTY, ILLINOIS,)	
MASSAC COUNTY, ILLINOIS SHERIFF)	
TED HOLDER, PATRICK WINDHORST,)	
and JOHNATHAN BEARD,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

YANDLE, District Judge:

Before the Court is Defendant Patrick Windhorst's Motion to Dismiss, filed on September 17, 2018 (Doc. 19). Plaintiff failed to file a response. For the following reasons, Defendant's Motion is **GRANTED**.

Plaintiff was arrested without an arrest warrant and held in custody without a judicial determination of probable cause for twelve days. She filed suit against Massac County, Illinois, Massac County Sheriff Ted Holder, Massac County corrections deputy Johnathan Beard, and SA Windhorst alleging violations of her Fourth Amendment rights pursuant to 42 U.S.C. § 1983 (Doc. 1).

Plaintiff alleges that Windhorst is an "independently-elected constitutional officer under the Constitution of the State of Illinois", and that he had the "power" of his "respective office" to ensure that Plaintiff was provided a prompt probable cause hearing. *Id.* at ¶¶ 6, 18. Windhorst

asserts that Plaintiff's claims against him are barred by the doctrine of sovereign immunity because he is the duly elected State's Attorney for Massac County.

The Court may, in its discretion, construe a party's failure to file a timely response as an admission of the merits of the motion. *See* Local Rule 7.1(c) (requiring a response to a motion to dismiss be filed 30 days after service of the motion and stating a failure to timely respond may be deemed an admission of the merits of the motion); *see also Tobel v. City of Hammond*, 94 F.3d 360, 362 (7th Cir. 1996) (“[T]he district court clearly has authority to enforce strictly its Local Rules, even if a default results.”).

Here, having fully considered Defendant's arguments, the Court deems Plaintiff's failure to respond as an admission of the merits of the motion and grants Defendant's Motion to Dismiss (Doc. 19). Accordingly, the claim against Defendant SA Windhorst is **DISMISSED without prejudice**.

IT IS SO ORDERED.

DATED: October 29, 2018

s/ Staci M. Yandle
STACI M. YANDLE
United States District Judge